No doubt the concept of public interest litigation as propagated by the Indian Supreme Court is highly favoured by some local lawyers, both practising lawyers and academicians. It is, however, irrelevant as to whether this court shares their sentiments because of the doctrine of *stare decisis*. The scope of *locus standi* as propounded by our courts up to date can be summarised in this way: In order to have the *locus standi* to invoke the jurisdiction of judicial review, the applicant should claim, if not a legal or equitable right, at least sufficient interest in respect of the matter to be litigated. The extent of sufficient interest depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the nature of the breaches of the statutory power, the specific circumstances of the case, the nature and extent of the applicant's interest or grievance and the nature and extent of the prejudice or injury suffered by him.

Transposing the principles of law as discussed above to the present case, this court is satisfied that as (i) the applicant is a rate-payer, (ii) and that he had contracted a monogamous marriage, and (iii) he strongly adheres to the sanctity of a monogamous marriage which has the backing of an Act of Parliament, namely, the Law Reform (Marriage and Divorce) Act 1976, the applicant has a standing to challenge the decision of the second respondent and the endorsement of the said decision by the third respondent at least at this threshold stage of his application for leave. Pausing for a moment to make an observation, it is to be noted that I have not taken into consideration whether the applicant's status as a member of the Malaysian Bar could or should be taken into account to support "his standing to sue". Nevertheless in passing and without deciding I do not think that a member of the Malaysian Bar can depend solely on his status to gain a greater privilege than any other ordinary member of the public in the matter of "standing to sue". In addition, the applicant has also sufficiently made up a case (at least at the threshold stage) which shows that in approving the film publicity materials in question under section 12A of the Cinematograph Films (Censorship) Act 1952 (Act 35), the second and third respondents had failed to take into consideration that the said materials bearing the title "Happy Bigamist" and the advertising message of "two wives in one house policy feasible" would have the effect of depraving the sanctity of a monogamous marriage; indeed the said material has the tendency to promote bigamy which in law is offensive. Hence he contended that the said respondents had acted in violation of the powers conferred on them by the said 1952 Act, and such violation is prejudicial or causes injury to his personal interest and that of a section of the public sanctifying the fundamental concept of "one man one wife". For these reasons, I am satisfied that his "standing to sue" cannot seriously be challenged at least at the threshold stage when he is only applying for leave. It may well be that in considering the substantive application for an order of certiorari, this court may decide to reject the application based on whatever materials the respondents may furnish this court such as the legality of their policy decision, or that in exercising the discretionary powers conferred on them under the 1952 Act they were not in breach of any of the provisions of the said Act or that their decision is not amenable to an order of certiorari to quash the same. When all these matters are before this court, I would then be in a position to consider whether the applicant can properly invoke the jurisdiction of this court for an order of certiorari.

In the circumstances, I dismiss the objection raised by the Senior Federal Counsel.

Order accordingly.

Solicitors: *George John & Co.*

RE SENSON AUTO SUPPLIES SDN. BHD.

[O.C.J. (Edgar Joseph Jr. J.) July 7, 1987]

[Penang – Companies Winding-up No. 42-23-86]

Companies and Corporations – Winding up – Petition for – Oppression – Just and equitable ground – Companies Act 1965, ss. 181 & 218(1)(i).

In this case a petition was presented by four individuals for the winding up of Senson Auto Supplies Sdn. Bhd. ("the Company") under section 181 of the Companies Act 1965, on the ground that the affairs of the Company were being conducted in a manner oppressive to them. During the argument, however, counsel for the petitioners also relied upon the just and equitable ground under section 218(1)(i) of the Act.

Held, dismissing the appeal: (1) the words "just and equitable" in section 218(1)(i) of the Companies Act enable the court to subject the exercise of legal rights to equitable considerations, that is to say, considerations of a personal character arising from one individual and another which may render it unjust or inequitable to insist on legal rights or to exercise them in a particular way;

(2) even if the directors or majority shareholders have been guilty of improper or unreasonable conduct so

that there appears to be a *prima facie* case for relief, it will be refused if the real purpose of the petitioners is to obtain payment of a money owed by the Company;

(3) it is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith;

(4) in the present case there was inordinate delay in the presentation of the petition sufficient to debar the petitioners from relief by way of an order for winding up;

(5) the court was not satisfied that the charges of oppression or discrimination were made out and neither was it satisfied that it would be just and equitable to wind up the Company.

Cases referred to:

(1) *Ebrahimi* v. *Westbourne Galleries* [1973] A.C. 360, 379.
(2) *Re Kong Thai Sawmill (Miri) Sdn. Bhd.* [1978] 2 M.L.J. 227.
(3) *In Re International Securities Corporation (Ltd.)* (1908) 24 T.L.R. 837.
(4) *Tivoli Freeholds Ltd., Re* [1972] V.R. 445.
(5) *Re Crown Bank* (1890) 44 Ch.D. 634.
(6) *Re K/9 Meat Supplies (Guildford) Ltd.* [1966] 3 All E.R. 320.
(7) *Re Bellador Silk Ltd.* [1965] 1 All E.R. 667.
(8) *Re Jermyn Street Turkish Baths Ltd.* [1971] 3 All E.R. 184.

COMPANIES WINDING-UP.

V. Shanmugam for the petitioners.

Tan Phock Kin for the Company.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This was a petition by four individuals who, for brevity and convenience, I shall refer to as Fong, Lim, Chong and Phang or, collectively, as "the petitioners" for the winding up of Senson Auto Supplies Sdn. Bhd. ("the Company") under section 181 of the Companies Act 1965 ("the Act") on the ground that the affairs of the Company were being conducted in a manner oppressive to them. During the argument, however, counsel for the petitioners also relied upon the just and equitable ground under section 218(1)(i) of the Act.

At the outset, I should perhaps mention that a number of creditors gave notice of intention to appear at the hearing of the petition but all of them indicated their opposition to it.

The Company was incorporated on September 13, 1980 as a private company limited by shares. The articles of association provided that the shares of the Company may not be transferred to any person other than members of the Company or members of their family but power was conferred upon the directors to approve a transfer to outsiders. However, the directors could, in their discretion and without assigning any reason, refuse to register a transfer to any person who is not a member and of whom they did not approve. The memorandum and articles of association of the Company were subscribed by two subscribers, namely, Ooi Say Chong and Phang who were appointed by the articles to be the first directors of the Company. The nominal capital of the Company was $300,000 divided into 300,000 shares of $1 each but was raised to $600,000 at an Extra-Ordinary General Meeting held on December 25, 1983. The amount of capital paid up or credited as paid prior to March 3, 1986 was $355,350 comprising 355,350 shares of $1 each and thereafter $464,450 comprising 464,450 shares of $1 each.

The principal business of the Company was the dealing in automotive spare parts accessories for the use of motor vehicles.

At all material times to this petition, the shareholdings of the members of the Company were as follows:

Names	Numbers of shares	Percentage
1. Ooi Say Chong	51,150	14.4%
2. Ooi Say Hup	17,100	4.81%
3. Ooi See Seong @ Ng Ah Ba	34,200	9.62%
4. Fong Kin Nyang	3,450	0.76%
5. Lim Yo Sim	32,400	9.12%
6. Chong Mooi Chew @ Chong Mooi Choy	8,550	2.41%
7. Phang Meng Chen	39,900	11.23%
8. Ooi Soo Bem	24,050	6.77%
9. Ooi Say Kok	17,100	4.81%
10. Ooi Heng Kok @ Ooi Say Hwa	17,100	4.81%
11. Gan Guat Lee	34,200	9.62%
12. Kong Chu Ah @ Kong Teok Chan	51,150	14.40%
13. Ng Hock Guan	13,300	3.74%
14. Perai Jaya Engineering Sdn. Bhd.	11,400	3.21%
15. Tan Kung Huak	300	0.08%
	355,350	100.00%

The first three of the above named persons are brothers whilst the ninth, tenth and eleventh are their relatives. It was alleged by Lim, but challenged by the Company, that the fourteenth named shareholder, an incorporated company, is controlled by the Ooi family. The fourth, fifth, sixth and seventh named are the petitioners.

The above table shows that the three Ooi brothers own 28.83% of the total shares in the Company; if the shares of their three relatives, namely, the ninth, tenth and eleventh named individuals are added, then the total shareholdings of the Ooi family – using that expression in its widest possible sense – expressed in terms of a percentage would be 48.07%. And, if to this is added the shareholding of Perai Jaya Engineering Sdn. Bhd., namely, 3.21%, the resulting percentage would be 51.28%. There is, however, no evidence establishing that the Ooi family does in fact control Perai Jaya Engineering Sendirian Berhad. Moreover, I do not consider that the expression "the Ooi family" should be expanded to include the relatives of the three Ooi brothers.

Turning from the general to the particular, I noted, in passing, that counsel for the petitioner was not able to draw my attention to even a single example in the Company's Minute Book (D1) of the Ooi brothers having used their voting power to outvote the petitioners or any of them. However, Phang, an executive director of the Company since its inception until he resigned on July 15, 1985, claimed that the Minute Book (D1) was not a true record, it being prepared prior to board meetings. He went further and alleged that at the last board meeting he attended, he had been asked by the Secretary, Mr. Lim Chong Choon (D.W.2), to sign several times in the Minute Book signifying his attendance. It is noteworthy, however, that when the Secretary was in the witness box, this allegation was never even put to him in cross-examination.

Phang further alleged (although this was never pleaded in the petition) that during his term as director, a board meeting was held and a resolution passed relieving him of his directorship. But, a little later, he modified this complaint and said that he had sought re-election but was defeated. However, when during cross-examination counsel for the Company confronted him with the relevant minutes (page 29 of the Bundle of Pleadings) which showed that his name was not one of those proposed for the office of director and that he had himself proposed that nominations be closed, he had to reluctantly admit that he was confused about the issue.

I hasten to add that I did not overlook the letter signed by Phang, Lim Yeoh Meng and Lim Yo Sim dated July 28, 1986 addressed to the Secretary of the Company wherein Phang said he had complained about the failure of the Company to hold board meetings in time. However, a perusal of this letter (which incidentally was written long after the disputes herein had arisen) shows that it said nothing of the sort for it reads:

"Lim Yeoh Meng
Lim Yo Sim
Phang Meng Chen
4358, Jln Heng Choon Thian,
1200 Butterworth.
28-07-86

The Secretary,
4391, Jln Heng Choon Thian,
12000 Butterworth.

Dear Sir,

Re – Audited account

Please let us have the latest audited account for the following companies:

(1) Senson Auto Supplies Sdn. Bhd.
(2) Japsons Truck Parts Sdn. Bhd.
(3) Consons Engineering Sdn. Bhd.
(4) Chisons Auto Body Parts Sdn. Bhd.

Because till today, we still haven't received any copy of the audited account for the above companies.

In the same time, please let us know when are the AGM for the above companies, to our knowledge, most of the companies have never hold the AGM to pass the audited account yet.

In future any meeting notice, please send by registered, in order to make sure that we are informed.

Thank you.

Yours faithfully,

sgd.	sgd.	sgd.
Lim Yeoh Meng	Lim Yo Sim	Phang Meng Chen

After this letter we received the above three confirmation notice for AGM 1 = EGM
2 & 4 = AGM to pass the account
28/8/86 "

Phang also alleged (contrary to the contents of the Minute Book (Ex.D1)) that proper board meetings were held only once every few years, that

most directors' meetings were merely informal ones and held in the Chairman's house and at which everything would be decided. This was, of course, flatly contradicted by the attendance sheets in the Minute Book signed by him.

I am afraid I found Phang to be neither careful nor fair but quite prepared to make very extravagant and unjustified claims. He has no doubt persuaded himself that his grievances are justified but he has wholly failed to persuade me. His last mentioned grievances were raised for the first time in the witness box and were unsupported and, in fact, contrary to the contents of the Minute Book which I regard as a true and complete contemporary record. He also did not impress me as a witness of truth.

I might as well add that the same criticisms I have made regarding the testimony of Phang would apply to that of Lim, the Managing Director of the Company since its incorporation until he resigned in July 1985.

In any event, there was no evidence that the three relatives – if I may use that expression for brevity and convenience – supported the Ooi brothers' actions nor for that matter Perai Jaya Engineering Sendirian Berhad did so.

On the contrary, there was evidence that Ooi Say Hup stood for election as Director but failed in his bid (See Minute Book - D1 page 52).

But, the matter does not rest there, for the petitioners also complained that the Company was in substance a partnership in corporate form there being a restriction upon the transfer of the members' interest in the Company, that they have lost confidence in the Ooi brothers and generally in the board and so cannot carry on business together. More particularly, it was alleged that the Ooi brothers had acted unfairly or abused their powers by failing to disclose that they were proprietors of Bagan Auto Sy'kat Chainferry Kompleks, a firm which supplied goods, being old stock, to the Company at exorbitant prices, in consequence of which they had made secret profits and thereby allowed their duty to conflict with their interest.

Now, it is true that a limited company is more than an artificial juristic person with a personality of its own; behind it or among it there are individuals with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure. The words "just and equitable" in section 218(1)(i) of the Act enable the court to subject the exercise of legal rights to equitable considerations, that is to say, considerations of a personal character arising from one individual and another which may render it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way (per Lord Wilberforce in *Ebrahimi* v. *Westbourne Galleries*[1]).

In point of fact, however, Bagan Auto was a sole proprietorship owned by Ooi See Siong having its place of business at No. 4351, Heng Choon Thian Road, B'worth where Prai Jaya, a company of which Phang was Managing Director, also had its registered office. Whilst it was true that the Company did purchase goods from Bagan Auto for the purpose of trade, the petitioners had been well aware of the practice and did not appear to have taken any exception to it until they commenced the present proceedings. I would add, in passing, that the charge that the goods purchased were old stock and exorbitantly priced was wholly unsubstantiated. In these circumstances, it does not appear that there was any deliberate concealment by Ooi See Seong of his interest in Bagan Auto but, assuming that there was, I would regard such failure as lying outside the range of section 181 of the Act (see *Re Kong Thai Sawmill (Miri) Sdn. Bhd.*[2] per Lord Wilberforce at p. 233 column 1 I).

But, the petitioners also complained that although the main objective of the Company as described in the objects clause of its articles of association was to carry on the business of dealing in automotive spare parts accessories for the use of motor vehicles, the Company's cash was now being used for investing in a tontine business operated by a company called Textson Agency & Trading Co., an activity which is not only unauthorised by the articles but wholly illegal as well. In support of this contention, my attention was drawn to the case of *In Re International Securities Corporation (Ltd)*[3] where a company was formed chiefly for the purpose of dealing in "premium bonds," an illegal business, the premium bonds coming within the Gaming Acts as lotteries. It was also found to be carrying on the business fraudulently. In the present case the Company was formed, as I have already mentioned, chiefly for the purpose of dealing in automotive spare parts accessories for the use of motor vehicles, a wholly lawful activ-

ity and there is not a speck of evidence that they did so fraudulently.

It is trite law that where the main objective of a company has disappeared the court may order the company to be wound up on the just and equitable ground (see section 218(1)(i) of the Act). So, for example, in *Re Tivoli Freeholds Ltd.*[4] a company's main objective as described in its objects clause was to carry on the business of entertaining, running theatrical shows, *etc.* but its assets (mainly cash) were being used *solely* for the purpose of financing takeover operations. The court held that the company's main objective had disappeared and that it should be wound up on the just and equitable ground. Again, where the *only* business of a company is *ultra vires* the company it may be wound up: *Re Crown Bank.*[5] And, yet again, it would seem that wilful or persistent breaches of the Company's articles by other directors will be a ground for a director or former director who is also a shareholder seeking a winding up order and it would not seem necessary for the petitioners to show that the breaches amounted to an oppressive course of conduct directed against them: *Re K/9 Meat Supplies (Guildford) Ltd.*[6]

At the end of the day, however, I was not satisfied that the charges of oppression or discrimination were made out nor for that matter was I satisfied that it would be just and equitable to wind up the company.

As to the prayers for rescission of the contract pursuant to which the 25,381 ordinary shares in the Company had been allotted to the petitioners and refund of the price paid for them, such reliefs, if granted, would result in a reduction of capital to the prejudice of creditors. It must therefore be denied.

It is, of course, true to say that whilst engaged in the motor trade, the Company did make investments in a tontine business carried on by Textson Agency & Trading Co. which was an illegal activity and, of course, not authorised by its articles of association. But, the fact remains that none of the petitioners – including Lim and Phang, who served as Managing Director and Executive Director respectively from the date of the incorporation of the Company until some time in July 1985 when they chose to resign – took any steps to complain about investments in the tontine business until these proceedings were commenced. There was thus clear evidence of acquiescence on their part. Not only that, it would appear that they must have taken their share of the profits accruing from these investments. In these circumstances, I fail to see how it could be said that the charge of oppression or disregard of interests could be made out upon these grounds.

There was another matter related to the Company's investments in Textson Agency & Trading Co. which requires consideration. More particularly, it was alleged by the petitioners that some time in 1984, a sum of $80,500, being tontine money, was paid by Textson Agency & Trading Co. to the Company and its Board of Directors had agreed to pay this sum to all shareholders, the same to be apportioned having regard to their respective shareholdings and to issue shares. It was said that notwithstanding this the majority of the shareholders failed to consider these matters at the Extra-Ordinary General Meeting held on April 30, 1986 and, instead, had subsequently proposed to use the money to purchase automotive spare parts accessories. Furthermore, it was also said that as a result of the manipulation and discrepancy in the accounts of the Company with regard to the sum of $80,500, the accounts of the Company for the year ended August 31, 1985 could not be audited.

On the other hand, Ooi Soo Bem denied that the Company's Board had agreed to pay out the sum of $80,500 to shareholders and that to do so would have entailed, in effect, a manipulation of the accounts. What was more to the point was an admission made by counsel for the petitioners, in answer to a question from the court, during a prior hearing of an application by the Company to discharge an *ex parte* interlocutory injunction "restraining the directors of the company from passing a resolution to handle tontine money amounting to $80,500". On that occasion, I had asked counsel for the petitioner if the interim injunction was of any use if it was admitted (as indeed it had been) that the money had already been disbursed in the day to day running of the Company's business and he had conceded that there was none and consented to the order for discharge.

As to the charge of manipulation of the accounts, according to the evidence, it is apparent that the accounts of the Company did not reflect that the sum of $80,500 was tontine money, perhaps understandably. In fact, Lim had himself confirmed that the practice of the Company

when receiving tontine money was to camouflage the same by issuing receipts in the names of shareholders for sums corresponding to their respective shareholdings. But, it should not be overlooked that at the time of the receipt of this money, Lim and Phang were the Managing Director and Executive Director respectively. Indeed, according to Lee Chong Choon, the Company's accountant, at the material time, control of the company was in their hands. To quote him, "Whatever they said would go through. Other directors were figureheads." And then, touching on the subject of the $80,500, he explained under cross-examination that he first got to know that the $80,500 was tontine money in April or May 1986 when the Ooi brothers told him about this. He therefore called an Extra-Ordinary General Meeting to rectify matters. Having seen this witness testify, and having regard to the probabilities of the case, I have no hesitation in accepting his testimony. I might as well add that Lim had himself admitted under cross examination that the books of the Company for the year ended August 31, 1985 were subsequently audited and the sum of $80,500 correctly entered.

Accordingly, the charge relating to the $80,500 tontine money also lies outside the scope of section 181 of the Act.

There was a further main ground relied upon by the petitioners and it was this: it was said that the petitioners had together paid in the aggregate a sum of $25,381 towards the purchase of 25,381 ordinary shares (which formed part of the 109,200 shares referred to in the Return of Allotment of Shares appearing at pages 21 and 22 of Bundle of Pleadings and which, for convenience I shall refer to as "the additional shares") of $1 each but that despite the lapse of more than one year none had been allotted to them. The petitioners therefore wrote to the Board expressing their desire to revoke their application for shares on the ground of unreasonable delay. Notwithstanding this – so it was alleged – the majority shareholders, upon receipt of the notice of revocation, made requisition to hold an Extra-Ordinary General Meeting to sanction retrospectively the allotment of the additional shares to the petitioners and other members. It was further alleged, that to effect this, notice of Extra-Ordinary General Meeting was backdated to April 11, 1986 and Lim and Phang had received copies thereof only on April 16, 1986. Nevertheless, on April 30, 1986, the majority of the shareholders had passed a resolution allotting shares to the petitioners and other members. Accordingly, this was cited as an example of the wishes of the petitioners being disregarded, contrary to section 132D(1) of the Act.

I must now turn to consider, once again, the testimony of Mr. Lee, the Company's accountant. According to this witness, he had wanted to issue the share certificates in respect of the additional shares but, because of the specific instructions from Phang and Lim to delay their issue, so as to make it easier to answer an Inland Revenue Department query as to the source of funds, they were not issued until more than one year later. Touching on the notice of Extra-Ordinary General Meeting dated April 30, 1986 (P6), which was first intended to be held on August 28, 1986 to sanction retroactively the allotment of shares but which had to be postponed because of the interim injunction obtained by the petitioners, he said, and I believe him, that he did not backdate it, that the date it bore was the true date and that neither Lim nor Phang were present at the meeting though they had asked that their absence be excused.

In these circumstances, it is my finding that the complaint about the delay in the issue of the additional shares being caused by the Company was nothing less than a deliberate attempt to twist the facts.

It was also alleged by Lim that the cause of the disputes or differences between the Ooi brothers and the petitioners was attributable to the fact that when he had intended disposing of his shares in the Company to outsiders, certain directors – implying, I suppose, the Ooi brothers – would put them off by giving " a negative picture of the Company". He admitted, however, that he was not present on such occasions but was told about this by the potential purchasers none of whom were called with the result that this particular allegation was worthless as evidence being merely hearsay.

In summary, the evidence disclosed that although the investment of substantial sums of the Textson Agency & Trading Co. was a matter for serious criticism it was fully approved of by the petitioners who took their share of the profits resulting therefrom. At the very least, therefore, the plaintiffs acquiesced in these investments. They should not therefore be permitted to blow

hot and cold or, to use the familiar expression in Scottish law, to approbate and reprobate. I was also not satisfied that the Company had no other profitable activity. It will, of course, be for the shareholders as a whole to decide if they wish the Company to continue operations.

That, however, does not conclude the matter for there were two further grounds (not raised before me) upon which the petitioners should be denied the order for winding up.

First, I regard with considerable scepticism the *bona fides* of the petitioners in presenting this petition in order to obtain relief from alleged oppression, having regard to the alternative prayer in it for "rescission of all those shares allotted to the petitioners on April 30, 1986, and repayment of $25,381 paid therefore." There is authority for saying that even if the directors or majority shareholders have been guilty of improper or unreasonable conduct so that there appears to be a *prima facie* case for relief, it will be refused if the real purpose of the petitioners is to obtain payment of money owed by the Company (see *Re Bellador Silk Ltd.*[7]).

Secondly, I noted that the major matters complained about by the petitioners appear to have been spread out over a considerable period of time. It is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith (see *Re Jermyn Street Turkish Baths Ltd.*[8]).

In the present case, there was inordinate delay in the presentation of the petition sufficient to debar the petitioners from relief by way of an order for winding up.

In all the circumstances, I had no hesitation in dismissing the petition with costs.

Order accordingly.

Solicitors: *Shanmugam & Co.; Thillaimuthu & Phock Kin.*

ALAN WEBB & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abu Mansor J.) June 20, 1987]

[Kuching – Criminal Appeal No. KG 14 of 1985]

Trade Description – Supply of goods – Falsely stating that articles were offered previously at higher prices – Presumption against appellants – When presumption can be raised – Trade Descriptions Act 1972, s.14(1)(b)

The two appellants in this case, Alan Webb and Christopher Webb, were charged with three offences under section 14(1)(b) of the Trade Descriptions Act 1972 and punishable under section 18 of the same Act (Laws of Malaysia, Act 87). The three charges stated that the appellants, through advertisements, gave false indications, *i.e.* that the articles sold at the present prices were previously offered at higher prices, when it was not so offered.

At first instance the learned magistrate acquitted and discharged the appellants without their defence being called. The learned Deputy Public Prosecutor appealed. On appeal, the learned judge, John Chong J., reversed the magistrate's decision and ordered that their defence be called. The learned magistrate called for their defence and after hearing their defence and submissions of counsel convicted both appellants on the charges. The appellants were each fined. The appellants then appealed against their convictions and sentences.

Held, dismissing the appeal: (1) the principle to be applied is that the appellate court will only interfere if the decision of the lower court can be said to be tainted with an error of law or such decision is against the weight of the evidence;

(2) before the presumption under section 14(3) can be invoked, the prosecution must satisfy the court by evidence that the goods were not in fact offered. Upon this fact being established, then it is incumbent on the court to invoke the presumption. Nothing short of this matter is sufficient;

(3) under Malaysian law, by virtue of subsection (4) of section 14, it is for the defence to prove that they had so advertised at a higher price for the whole of the relevant period in section 14. If the defence had not done so, then it is false;

(4) in the present case, the appellants did not advertise at any time the recommended higher price. The 'falsity' meaning to be given is the statutory meaning. There was falsity in the present case;

(5) the convictions and sentences were confirmed.

Cases referred to:

(1) *Mat* v. *Public Prosecutor* [1963] M.L.J. 263.
(2) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, P.C.
(3) *House of Holland Ltd.* v. *London Borough of Brent* [1971] 2 All E.R. 296.
(4) *Ng Kim Huat* v. *Public Prosecutor* [1961] M.L.J. 308, 309.